Crowley Marine Services, Inc. *and* Inlandboatmen's Union of the Pacific, International Longshore & Warehouse Union, AFL–CIO. Case 32–CA–16596

November 10, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND HURTGEN

On April 29, 1999, Administrative Law Judge Joan Wieder issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings,[1] findings, and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Crowley Marine Services, Inc., Oakland, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Jo Ellen Marcotte, Esq., for the General Counsel.
Kenneth W. Anderson, Esq. (Gibson, Dunn & Crutcher, LLP), of Los Angeles, California, for the Respondent.

DECISION

STATEMENT OF THE CASE

JOAN WIEDER, Administrative Law Judge. This case was tried on February 9, 1999,[1] at Oakland, California. The charge was filed by Inlandboatmen's Union of the Pacific, International Longshore & Warehouse Union, AFL–CIO (the Charging Party or the Union), on February 9, 1998, against Crowley Marine Services, Inc. (Respondent). The compliant, as amended, alleges Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act).

Principally, the complaint alleges Respondent violated Section 8(a)(5) and (1) of the Act by refusing, since about December 10, 1997, to provide the Union with a copy of an arbitration award between Respondent and Seafarers International Union, which the Union claims is necessary for, and relevant to, the Union's performance of it representational duties.

Respondent's timely filed answer to the complaint admits certain allegations, denies others, and denies any wrongdoing. Respondent asserts the requested information is not relevant.

All parties were given full opportunity to appear and introduce evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs.[2]

Based upon the entire record, from my observation of the demeanor of the witnesses, and having considered the posthearing briefs, I make the following[3]

FINDINGS OF FACT

I. JURISDICTION

Based on the Respondent's answer to the complaint, as amended, I find Respondent meets one of the Board's jurisdictional standards. I find the Union is a statutory labor organization.

II. THE ALLEGED UNFAIR LABOR PRACTICES

Background

Respondent is a Delaware corporation with an office and place of business in San Francisco, California, engaged in the operation of tugboats and barges in interstate and International commerce. Respondent is one of several corporations under the overall corporate umbrella of Crowley Maritime Corporation (CMC).[4] CMC owned companies operate on the East, Gulf and West Coasts of the United States as well as in foreign waters. These companies own and operate tugs, barges, tankers, and other ocean-going vessels. Respondent primarily services the West Coast, operating in Puget Sound, Alaska, and San Francisco, California. Most of its current work involves tug and barge service in the Puget Sound area.

Respondent's operations in the San Francisco Bay area involve the loading and discharge of oil barges. Prior to 1992, this operation had been performed by the Harbor Tug & Barge Company (HTBC), which was a separately owned subsidiary of CMC. HTBC and the Charging Party have had a collective-bargaining relationship for more than 30 years. In 1992, HTBC was consolidated into CMS with a number of other separately owned subsidiaries. Another separate subsidiary, Crowley Towing and Transportation Company (CT&T), has historically performed work on the East Coast, Gulf Coast, and the Los Angeles/Long Beach Harbor. CT&T employees are primarily represented by the Seafarers International Union (SIU). In the Los Angeles/Long Beach Harbor area, CT&T tugs do contract towing, including ship assist work. CT&T and the SIU have had a collective-bargaining agreement for this work since about 1977.

Thomas Baldwin is employed by Respondent and has responsibility for its West Coast labor relations. In 1997 one of Respondent's affiliates formed Crowley Petroleum Transport, Inc. (CPT) as a subsidiary of CT&T. Respondent, Crowley Marine Services (CMS) is not in the oil tanker business. Baldwin admitted he knew nothing about the formation of CPT. The

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[1] All dates are in 1997 unless otherwise indicated.

[2] On April 5, 1999, Respondent filed a motion to clarify statements in General Counsel's brief, claiming several references to Respondent should be corrected to refer to an affiliate, Crowley Petroleum Transport, Inc. The motion is denied. The motion is in the nature of a reply brief. Even if the statements alluded to in the motion are not accurate, this decision is based on the evidence of record and applicable law, not a parties argument concerning the evidence. Thus, there is no basis to grant the motion, which should be, and is, denied.

[3] I specifically discredit any testimony inconsistent with my findings.

[4] Another related company is Crowley Petroleum Transport.

Coast Range and *Blue Ridge* were the first tankers purchased by a Crowley operation.

Respondent, for an undisclosed period of time, engaged in a time charter of a barge called the *450-6* that was dedicated to serve the Tosco Oil Company Avon facility. The *450-6* barge was time chartered to Tosco in 3-year increments, with the latest lease expiring June 30, 1997. The barge was loaded and unloaded by tankermen under the collective-bargaining agreement between the Charging Party and Respondent, in teams of two. It is undisputed the following unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees of Respondent engaged in the loading and/or discharging of Harbor Tug and Barge Company barges operating in Northern California, south to and including Morro Bay, north to Coos Bay and split discharges involving Coos Bay Oregon Ports of Call and Columbia River Area; excluding all other employees, guards, and supervisors as defined in the Act.

Infrequently, the tankermen would load and discharge barges when the barges were not docked. Usually, they drove to the refinery and worked 10-hour shifts. The *450-6* barge had a load capacity of 16,000 tons. After the barge was loaded, Respondent towed it to another Tosco facility located the Los Angeles, California area. The tankermen discharging the barge in the Los Angeles area were represented by the SIU working for CT&T. The Union's tankermen do not accompany the barge while it is being towed. The barges are unmanned when they are being towed. In contrast, the tanker's crew remains with the vessel when it is underway.

Around March, Tosco purchased Union Oil Company of California (Unocal), including a refinery in Rodeo, California, which is in the San Francisco, California area. Unocal had three tankers. Tosco determined it did not want to operate these tankers. Crowley Petroleum Transport, Inc. (CPTI) was formed in early 1997 as a subsidiary of CT&T to purchase two of these oil tankers from Tosco, the *Coast Range*, and the *Blue Ridge*. Another unrelated company purchased the third tanker. The *Coast Range* and *Blue Ridge* had been used to transport oil from Unocal's Rodeo, facility. With the purchase of Unocal, Tosco had two San Francisco Bay area refining facilities, one at Avon and the other at Rodeo.

Commencing around July 1, the loading and unloading of Tosco's petroleum liquid products was accomplished at both the Avon and Rodeo facilities by the crew of the *Coast Range*, whose 12 unlicensed crew was represented by the SIU and 8 licensed officers were represented by the American Maritime Officers. The SIU has represented the unlicensed personnel of the two oil tankers since late May 1997. The *Blue Ridge* is operated by CPTI on the East and Gulf Coasts. The *Coast Range* is time-chartered to Tosco. Under this charter, CPTI provides the vessel and crew whose primary operation is the transportation of Tosco oil and refinery products from the Rodeo and Avon refinery to Southern California. Respondent never informed the Union of the change prior to July 1. The Union learned of the change when one of its member tankermen, Eugene S. Tracy, filed his grievance.

The Charging Party represents Respondent's tankermen. The unit has about 15 members. Respondent and the Charging Party currently have a collective-bargaining agreement and are in negotiations for a successor agreement. Tankermen load and discharge liquid cargoes, primarily petroleum products. They must receive a Coast Guard certification prior to performing this work. As here pertinent, the Charging Party's members work in the San Francisco Bay area, including its tributaries. In the San Francisco area, the Charging Party represents solely tankermen who work on barges. Its ILW charter allows the Charging Party "to represent anybody on ships or tugs, barges, ferries." It has not made a demand to represent any of the crew of the *Coast Range* or *Blue Ridge*. The *Coast Range* has the capacity to carry 39,000 tons of petroleum or petroleum product.

After the *Coast Range* commenced operations at the Tosco refineries, Tracy filed a grievance. The grievance, dated July 15, claims: "On July 1, 1997, I was laid off by Crowley Marine Services, Inc., due to Crowley shifting the work that I was formally doing on the 450-6 to one of the new . . . tankers that Crowley purchased from Tosco." The grievance claimed Respondent's actions violated articles 1 and 38 of the collective-bargaining agreement, and seeks rehiring of the grievant with back pay for lost wages from July 1.

The Union determined to file a more generic grievance on August 7, to cover all of its members. The grievance asserted: "The company violated the agreement when they refused to bargain the effects of this change, when they hired non-IBU crews to perform our work, displacing the tug and barge and towing services with tankers." At the time of the grievance, the Union knew the SIU was providing the unlicensed crew of the *Coast Range*. Secchitano, the Union's regional director, learned from the Union's national president, that "he talked to somebody in the Crowley Company, and that there was an arbitration award assigning that work to the SIU." Respondent never disputed this information. Both of Respondent's witnesses, Baldwin and Norman George, the manager of tanker operations for CPTI, did not know the contents of the SIU arbitration award. The Union understood SIU members were loading the Tosco products that used to be loaded by the Union's tankermen. The Union does not know the details of the *Coast Range* operation. The Union does not know if the SIU arbitration award referred to any particular customer. Secchitano admitted the Union suspected the SIU arbitration award had relevance to the grievances but did not have certain knowledge if it was relevant.

The August 7, grievance claimed articles 1, 2, 4, 6, 21, 38, and other provisions of the collective-bargaining agreement were applicable to the grievance. At hearing, the Union claimed articles 1, 2, and 38 are applicable to the grievances. The collective-bargaining agreement, which had an effective date of October 21, 1996, was extended during the pendancy of negotiations for a new agreement, and was in effect at all times pertinent to the matters discussed in this proceeding.

Article I, entitled "RECOGNITION AND WORK PRESERVATION" provides:

> The Company recognizes the Union as the exclusive bargaining representative for all employees as described and classified herein. All work which has previously been performed under the terms of this Agreement or its predecessors, including but not limited to the following, shall be assigned exclusively to Employees covered by this Agreement and shall not be reassigned or transferred to non-bargaining unit employees in other facilities or operations owned, managed, or controlled by the Employer or is subsidiaries. All work was described in the articles of this Agreement (including Responsibilities and

> Duties, General Seamanship, and other parts of Tankerman's Handbook-Crowley Maritime Corporation, Third Edition[5]), Oakland, CA, dated January 1991.

Article 2 of the agreement, entitled "SCOPE AND GEOGRAPHICAL JURISDICTION OF AGREEMENT," provides:

> All employees covered by the Agreement shall load and/or discharge Harbor Tug and Barge Company barges operating in Northern California, south to and including Morro Bay; north to Coos Bay and split discharges involving the Coos Bay Oregon Ports of Call and Columbia River area.

Article 38 of the agreement, entitled "FAVORED NATIONS CLAUSE," provides:

> A. If the National, the San Francisco Region, or an autonomous region of the Inlandboatmen's Union of the Pacific/International Longshoremen's and Warehousemen's Union hereafter enters into any contract with any other company regularly operating or competing for business within the geographical scope of this Agreement and said contract is more favorable to that employer in total IBU labor operating costs than this Agreement, and that company uses or intends to use said contract to compete directly against Crowley Marine Services, Inc. (formerly Harbor Tug and Barge Company), the Union and the Employer will meet promptly to draft an amendment to equalize the total IBU labor operating costs for the work in question for the period during which the competition takes advantage of its contract. In the event the parties cannot reach agreement, within five (5) working days, either party may submit the issues to the arbitrator under Article 6. The arbitrator will schedule a hearing within five (5) days from the date of the notice of arbitration and will issue a decision within 48 hours to determine which provisions will be used to equalize labor cost.
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> B. Crowley Marine Services, Inc . . . agrees that for the life of this Agreement [it] will not be able [to be] a participant in or contribute any assets, equipment under their control, nor employees to any company, partnership, or joint venture which intends or is tended to compete with or replace the tug, barge and towing services which are presently offered or have been offered in the past by Crowley Marine Services, Inc . . . or which would have the effect of reducing the amount of work available to the Bargaining Unit [sic].
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> C. The Union will provide the employer with a complete copy of all Labor Agreements and Letters of Understanding that it has entered into with other employers upon request and any subsequent Labor Agreements or Letters of Understanding within five (5) calendar days of their signing.

Respondent discussed the Tracy grievance with the Union on July 15. On August 21, Respondent, by Baldwin, sent the Union a written response, asserting it did not shift the work formerly performed by the *450-6* barge to the newly purchased tanker operated by CPTI. Tosco terminated the barge lease and would not continue to use a barge "regardless of CPTI's purchase of oil tankers." The letter also claimed CPTI is not in competition with and is not replacing CMS's barge services and is not reducing the work available to San Francisco based tankermen. The letter informed the Union the oil tankers had been purchased by Crowley Petroleum Transporting, Inc.[6] The *450-6* barge was reassigned to another service operated by Alaska Oil services in Alaska. Respondent, in mid-July, transferred *Barge 102* on the West Coast, and it operated between Seattle and Portland and is available to work in other West Coast ports. Baldwin asserted Respondent was not shrinking its barge operations, rather, its was following historic practice of reassigning barges. There is no evidence *Barge 102* operated within the Charging Party's geographical jurisdiction. Respondent denied violating either article 1 or 38 of the collective-bargaining agreement when it laid off Tracy because the layoff was the "result of normal business changes."

Respondent denied the grievances at a meeting held August 8, claiming they were untimely. During this meeting, Baldwin informed the Union CPTI was performing the transportation services previously performed by the *450-6* barge. In a letter to the Union dated August 21, from Baldwin, Respondent specifically denied the August 7 grievance because it was untimely and the claim Respondent refused to engage in effects bargaining is without merit because:

> CPTI is in a separate company and in a substantially different type of business than the barge transportation engaged by CMS. CPTI is a deep-sea company utilizing oil tankers. They are separate business competing for different markets and thus CPTI does not displace, reduce or have any effect on the bargaining unit work applicable to the San Francisco-based tankermen.

In another letter to the Union dated August 29, Respondent denied the Tracy grievance asserting "CMS did not shift the work that was formerly performed by Barge 450-6 to one of the new oil tankers that a separate company . . . (CPTI) purchased from TOSCO. . . . It is our understanding that TOSCO, in light of its new needs, decided that Barge 450-6 was not suitable. Thus CMS was not going to be able to continue to use the 450-6 to perform TOSCO's work regardless of CPTI's purchase of oil tankers." Respondent also asserted another barge, *Barge 102*, was transferred to the West Coast operation in mid-July thus CMS was not reducing its barge operations, which were always variable, as illustrated by the lapse of the time-charter and the reassignment of the *450-6* barge.

By letter dated November 21, the Union requested the "IBU grievance" be taken to arbitration to ascertain if Respondent violated the collective-bargaining agreement. At the time of this request, Respondent had already denied the grievances as untimely. The contract requires a grievance be filed within 20 days of the event giving rise to the grievance, which Respondent claims is July 1. The Union asserts the contract violation may be continuing since the *Coast Range* continues to operate at the Tosco Avon facility. The letter also claims:

> Your position has been that the grievance was untimely. As I have pointed out to you, the Company has not been forth coming with information on this issue. In fact, the Company did not come to us and inform us they would

[5] This handbook was not placed in evidence.

[6] The Union never requested Baldwin to provide information concerning which Crowley Ccompany purchased the *Coast Range*. The Union believed the SIU arbitration award would reveal that information. Secchitano explained at hearing that the Union was investigating to determine whether to pursue arbitration.

> be doing this.[7] I have tried to get more information from you on occasion and you have indicated "you do not know." How can the Union be expected "to know" information regarding the purchase of the tankers and what the Company intended to do with the tankers when you, Manager of Labor Relations, don't even know.
>
> Please provide me with a copy of the arbitration with the SIU that deals with the crewing of these ships at you [sic] earliest convenience.

At the time Secchitano sent this letter, the Union knew the SIU represented the unlicensed crew aboard the *Coast Range*. The Union never considered making any claim for the work performed by the licensed crew of the *Coast Range*. Secchitano admitted the Union's concern was not who was crewing the *Coast Range*, rather, was the *Coast Range* was doing some of the work previously done by tankermen; work the Union believed tankermen should still be performing. Secchitano also admitted the collective-bargaining agreement with Respondent covers loading the *450-6* barge but not tankers.

Baldwin responded to the union letter on December 10, asserting the Union's November 21 letter does not specifically identify a grievance, he assumed it related to the Union's August 7 grievance and the Tracy grievance. Baldwin asserted both grievances had previously been found to be untimely and without merit. Baldwin acknowledged the Union on September 18 asked for an extension of time to file an appeal, which he was unwilling to grant. According to Baldwin: "By waiting until November 21, 1997 to request arbitration, the IBU has waived its right to proceed to arbitration. Article 6(b) has specific time limits which must be complied with."

Concerning the requested information, Baldwin claimed in his letter:

> Your letter also requests that I provide you with a copy of an arbitration decision involving the SIU which involves the crewing on the tankers in question. I am at a loss to understand the relevance of such a request. The crewing of such blue water vessels would not be of any particular concern to a union representing barge tankermen. I have a suspicion that the request is really on behalf of the SUP[8] which I have been told and I believe you know has filed an unfair labor practice charge on the crewing issue which was dismissed by the NLRB. If I am wrong in my suspicion, I apologize, but, in any event, you need to explain to me why an arbitration decision on the crewing of a vessel on which the IBU has no recognition or other claim could possibly be relevant to the IBU.

As previously mentioned, the Union learned of the SIU arbitration from its national office, which was informed of the award by one of Respondent's unnamed representatives. According the Union's regional director, Marina Secchitano, the Union requested a copy of the SIU arbitration because:

> Well, because our understanding of the situation is that, the response the company gave to us was that the reason we don't have, you know, we didn't get that work or they didn't talk to us was that it was a different kind of operation and that it wasn't related to what we were doing, it wasn't replacing the services that we had been doing.
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> And when we found out that there was an arbitration, and we heard that there was an arbitration that, you know, assigned this work to someone else, we felt that it was completely relevant because, you know, as much as we know about that company that supposedly—we don't know what company the arbitration award is from. I guess we would like to know that because we think the language in our agreement provides us remedy in this situation.
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> And if we had that agreement, we could see where they're basing the fact that it's not related to our work. For example, if in fact the company were to say that it was definitely related to, say, a tug and barge contract they have with another organization, then we'd like, you know, if they assigned that work to that union who has the tug and barge workers, then we think we have a legitimate complaint.
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> And we think we have a legitimate complaint, but in order to prepare for our arbitration, we'd like to know exactly what took place and how that work got assigned to that other group.

The Union believed the SIU arbitration award related to the tug and barge movement of the Tosco Avon petroleum products for it involved the movement of the same products by the *Coast Range*, owned and operated by an affiliate of Respondent. The Union also believed the SIU arbitration award contained information that supports its contention the operation of the *Coast Range* is a replacement for the services of the tugboat and barge operation of Respondent. Inasmuch as Respondent denied the grievances because of its claim the work is being performed by another organization and the Union's members did not do that work, the Union was justified in determining who the work was assigned to and why. The Union believes the SIU arbitration award contains that information.

Secchitano claims:

> We have a contract that gives us the right to perform certain work for this employer, and that work is related, in this contract, to tug and barge movement of petroleum products. And we have a section in our agreement that was a bitter pill to swallow that—it's two part. One, we will not undercut this labor agreement with anyone else, any other competing companies, and in exchange for that, what we got is that the company agrees that they won't put us out of work by bringing someone in to do that work. And the language itself says that—
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> What I would say is that the contract says that they won't replace the work that's being performed, replace the tug and barge and towing services. Tug and barge and towing services are being performed, you know, by us with some other company. They won't use their assets, they won't participate in that.

Secchitano also asserted during her testimony the relevance of the SIU arbitration award may extend beyond the crewing issue "Because the Inland Boatmen's union represents the people on the tug, not my region, but my union, and the tug workers are covered with the same language that we have in our agreement for the tankermen. So it could extend beyond the

[7] Respondent admitted at hearing it did not inform the Union the time lease of the *450-6* barge was not going to be renewed or that a new affiliate was formed to purchase two tankers from Tosco which would commence transporting the products previously handled by the *450-6* Barge operation of CMS. Thus, there is a question of whether the contractual time period for filing grievances had been tolled.

[8] The SUP previously represented the unlicensed crew of the *Coast Range*.

tankermen." The collective-bargaining agreement between Respondent and the Union is limited to barges. The Union has not made any claim under the contract that it should represent the unlicensed crew of the *Coast Range*. Secchitano testified the Union's charter allows it to represent the ships unlicensed crew. Secchitano also testified the SIU arbitration award may have relevance in determining whether the Union should make a demand for recognition to represent the unlicensed crew of the *Coast Range*.

The Union responded to Baldwin's letter on February 13, 1998, 4 days after filing the unfair labor practice charge here under consideration. The Union explained the reason for the SIU arbitration request as follows:

> It has come to our attention that the Company was claiming the work was given to the SIU as a result of an arbitration. I would like to know what contract the grievance that led to arbitration was filed under, whether it was the tug and barge operation or the ship operation that claims were made under. It is important to determine whether the Company provided the information to another Union that should have been provided to us. If so, under what circumstances was this information provided that led the Union to believe a contract violation occurred. As you know, we were not given information in advance of the transfer of equipment, and the Company is claiming that the tug and barge operation was not replaced by the tanker operation.

The Union also sought information to determine the level of work occurring in the San Francisco Bay area. This request for information is not encompassed in the instant proceeding.

In another letter dated February 13, 1998, the Union explained the relevance of the request, including the information concerning the level of work in the San Francisco Bay area: "In order to determine whether we have any legitimate complaints, we require you provide us the information requested." In his reply to this letter, dated March 10, 1998, Baldwin notes the February 13 letter was mailed 3 days after the Union filed a charge with the Board, so the charge was filed prior to providing the Respondent with its reason or reasons for asserting the requested information was relevant. Baldwin remarked he was still unclear why the SIU arbitration decision was relevant inasmuch as the IBU "has no recognition or other claim" concerning the crewing of the oil tanker. Baldwin also asserts the oil tanker service provided by CPTI is a different type of operation performed by a company "completely separate from" CMS.

March 10, 1998, was the last correspondence and communication between the Union and Respondent concerning the SIU arbitration award. At the time Respondent and the Union discussed the grievances, the Union was not informed the company that purchased the tankers was a subsidiary of Crowley Towing and Transportation. Secchitano learned the identity of the purchaser after the grievances were filed. It is the Union's position that if it had learned of the tanker purchase and plan to eliminate the operations of the *450-6* barge prior to July 1, it could have possibly made a claim for the crewing of the *Coast Range*, even though its collective-bargaining agreement limits its jurisdiction to barge operations. It is undisputed since July 1, tankermen continue to be laid off from time to time by Respondent, which has been a historical pattern, but it is the Union's position that less tankermen are currently working.

Baldwin asserts he still does not know why the Union wanted to see the SIU arbitration award. Baldwin does not have any responsibility for the tanker operation. These responsible individuals, according to Baldwin, were Rick Mariner and Norman George. Baldwin did not speak to either of these gentlemen about the arbitration award. George testified he was made aware of the transfer date of the vessels, which was March 31. CPTI acquired the vessels on April 24. On June 24, the *Coast Range* was time-chartered to Tosco for 3 years. George was not involved in the SIU arbitration and did not indicate he was knowledgeable about the award.

Baldwin and George testified the *Coast Range* could carry more product than the *450-6* barge, with the *Coast Range* being able to carry about two and one-half times that of the barge. The tanker also has a faster steaming time and turn around time so it can move more product in a given amount of time than a single barge. The *Coast Range* is fitted with a vapor recovery system and inert gas system,[9] which are required by various regulations in San Francisco and Los Angeles. The *Coast Range* can segregate up to 10 grades of cargo and has the ability to carry clean and crude or black cargoes at the same time. Respondent also claimed the tanker crew remains with the ship while it is steaming and has Coast Guard certifications that are different from the certifications held by tankermen.

While George detailed the virtues of the *Coast Range*, he did not demonstrate possessing first hand knowledge of the capabilities of the *450-6* barge and did not claim to have expertise in barge operations. For example, Respondent failed to give the steaming times of the barge compared to the tanker, the number of various products the barge could carry, the number of products Tosco shipped per barge versus the tanker, or the actual turn around times. George claimed: "It can be a considerably more complicated operation, depending, of course, on what cargoes you're handling, but for the most part just because of the nature of the fitted equipment on the vessel, on the tanker, as opposed to the barge. It's a more complicated piece of equipment."

Respondent's witnesses admitted they did not know what certifications from the Coast Guard the tankermen employed by Respondent to load and unload the barge held. There was no evidence concerning their ability to operate the ship cleaning, vapor recovery, and inert gas systems. There was no evidence adduced concerning the products transported by the barge compared to those handled by the tanker and no demonstration the type of cargoes handled by both vessels, whether the same of different, made the operation of the vessel more complicated than the loading of the barge. Respondent admitted having two unions currently on the *Coast Range*. The number of union's representing its employees in the operations of its tankers was not claimed to be outcome determinative to any of Respondent's decisions.

Respondent did not present convincing evidence the barge did not possess inert gas or vapor recovery systems. George surmised it did not, but there were no predicates presented for this surmise. In fact, his engaging in such surmise works to impede his credibility. George's mien was such he appeared to

[9] George described the inert gas system as:

> Inert gas system is a system to produce inert gas to be supplied to the cargo tank so that the unfilled part of a cargo tank, what's referred to as the vapor space, is inserted and has oxygen level less than five percent so it is rendered, theoretically at least, explosion proof and fireproof. For the most part it is.

be attempting to tailor his testimony in a light most favorable to Respondent's position rather than attempting to candidly develop the record. In addition to engaging in surmise, he volunteered information; such as tankermen have a different coast guard rating than its SIU tanker crews. When questioned he admitted he did not know what Coast Guard endorsements the tankermen involved in this proceeding held. Baldwin also claimed the tanker was more versatile, but admitted the cargo consist was up to the charterer and he did not know what decisions Tosco made and accordingly, he did not know how, if at all, such decisions effected operations. Baldwin and George did not demonstrate first hand knowledge of the barge operation or Tosco's decisions. Baldwin at times failed to answer questions on cross-examination and he appeared to engage in hyperbole. Thus, their testimony will be credited only when credibly corroborated or is an admission against Respondent's interests.

Positions of the Parties

The General Counsel contends the requested arbitration award concerning the SIU crewing the *Coast Range* is relevant and is useful to the Union in meeting its statutory duties and responsibilities as the employees collective-bargaining representative. *Associated General Contractors of California*, 242 NLRB 891, 893 (1979), enfd. 633 F.2d 766 (9th Cir. 1980). The General Counsel avers the Union met its obligation of demonstrating a reasonable belief supported by objective evidence for the requested information. *Shoppers Food Warehouse*, 315 NLRB 258, 259 (1994). The merits of the Union's claim the contract has been violated is not relevant. Id.

This burden has been met, according to the General Counsel, because when the Union learned in July Respondent purchased the *Coast Range* and was using the vessel to transport petroleum products from Tosco's Avon facility to the Los Angeles area, work previously performed by the *450-6* barge, Tracy and the Union filed grievances. At the same time Tracy was laid off by Respondent. The Union learned the SIU was given the work on the *Coast Range* pursuant to an arbitration award. According to the General Counsel, the applicable collective-bargaining agreement "prohibits Respondent from transferring or reassigning unit work to non-unit employees in other facilities or operations owned, managed, or controlled by Respondent or its subsidiaries." Moreover, the General Counsel claims, article 38 of the collective-bargaining agreement prohibits Respondent from participating in or contributing equipment to any entity in competition with it.

Therefore, the General Counsel avers, the Union "clearly had a reasonable and objective basis for believing that the collective bargaining agreement was being violated." Accordingly, it reasonably attempted to determine how the crewing on the *Coast Range* was awarded to the SIU. That Respondent admittedly gave the Union no notice of the termination of the operation of the *450-6* barge whose operation was replaced with the *Coast Range* gave rise to a reasonable objective basis for the information request. The General Counsel also argues the timeliness of the grievances is not relevant, analogizing this case to those situations where the Board finds the unfair labor practices are recurring, and each recurrence is a separate and distinct violation. Citing *Beckley Belt Services Co.,* 279 NLRB 512 (1980); *Farmingdale Iron Works,* 249 NLRB 98 (1980), enfd. mem. 661 F.2d 910 (2d Cir. 1981). That a grievance is no longer pending does not exculpate an unfair labor practice and the grievance was pending at the time Respondent was requested to supply the information. *Beverly California Corp.*, 326 NLRB 153 (1998). The General Counsel also asserts the issue of timeliness is for the arbitrator to decide.

Respondent contends the relevance of the requested information was not established and there can be no valid grievance because the grievances were untimely. *Black Diamond Coal Co.*, 298 NLRB 775 (1990); *M. J. Santulli Mail Service*, 281 NLRB 1288 (1986); *Chambersburg County Market*, 293 NLRB 654 (1989); *Fountain Valley Regional Hospital*, 297 NLRB 549 (1991); *Leach Corp*, 312 NLRB 990 (1993), affd. 54 F.3d 802 (D.C. Cir. 1995); *Las Vegas Sands*, 324 NLRB 1101, 1110 (1997); and *California Portland Cement*, 283 NLRB 1103, 1105–1106 (1987). Respondent admitted grievances are not the only manner in which the Union can seek contract enforcement it argues would by barred by Section 10(b) of the Act. I find the 10(b) argument unpersuasive, inasmuch as the charge was filed within 6 months of the request for information and Respondent's continuing refusal to provide that information. *Farmingdale Iron Works, Inc.*, and *Beckley Belt Services Co.,* supra. Respondent claims the collective-bargaining agreement with the Union does not cover the work of the tanker, it is limited to barge operations. Respondent does not claim the requested information is confidential or a trade secret, merely that they do not supply information that is not shown to be relevant.

Respondent avers Tosco made the decision to terminate the barge operation; however there was no official shown to have directly communicated with a Tosco representative supporting this claim. No Tosco representative testified. Respondent argues the initial request for information did not demonstrate its relevance and the subsequent explanation for the request also did not meet the Union's burden of pointing to objective facts that demonstrate the specific relevance of the information to the grievances. An arbitration award to another union is not presumptively relevant. The crewing of a tanker, which is work the Union has not claimed, also is demonstrative of the lack of relevance of the requested information. The Union knew which union was crewing the tanker prior to making its demand. The collective-bargaining agreement between the Union and Respondent is limited to barges, thus any other information in the arbitration award sought by the Union has not been shown by any objective evidence to be relevant to any union claim the work should have been awarded to its members. All the Union has demonstrated is "complete speculation," which is not adequate to demonstrate relevance.

According to Respondent, at best, the request is a fishing expedition designed to determine if the language in a rival union's collective-bargaining agreement might permit the Charging Party to make recognition demands to crew deep-sea vessels. Such an end does not constitute demonstrating the relevance of the requested information. The collective-bargaining agreement limits the Union's jurisdiction to "employees . . . load[ing] and/or discharg[ing] Harbor Tug and Barge Company barges operating in Northern California." The Union's request for the SIU arbitration award involves a different union and employer and does not meet the standard of relevance required by the Act. *San Diego Newspaper Guild v. NLRB*, 548 F.2d 863 (9th Cir. 1977); and *F. A. Bartlett Tree Expert Co.*, 316 NLRB 1312, 1313 (1995).

According to Respondent, the Union failed to clearly communicate a relevant objective to Respondent. *Rice Growers Assn.*, 312 NLRB 837 (1993). The Union also failed to communicate to the Respondent a specific factual and objective basis for its information request at the time of the request. *Hertz*

Corp. v. NLRB, 105 F.3d 868, 872–873 (3d Cir. 1997); *NLRB v. George Koch Sons, Inc.*, 950 F.2d 1324 (7th Cir. 1991); *General Electrical Co. v. NLRB*, 916 F.2d 1163 (7th Cir. 1990); and *California Portland Cement*, supra at 1106. The reasons proffered at the time of the request by the union were not logically or rationally related to the information requested. *Detroit Edison Co.*, 314 NLRB 1273 (1994); *Uniontown County Market*, 326 NLRB 1069 (1998). The Union failed in meeting its burden of showing a reasonable objective basis for the request, it failed to establish the relevance of the request.

Analysis and Conclusions

It is a violation of Section 8(a)(5) and (1)[10] of the Act for an employer to "refuse to bargain collectively with the representative of [its] employees." An employer's duty to bargain in good faith includes the duty "to provide information needed by the bargaining representative for the proper performance of its duties," including information relevant to contract administration, negotiations, and grievance proceedings. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435–437 (1967). Accord: *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 303 (1979). Failures to fulfill the obligation to furnish relevant information upon request "conflict with the statutory policy to facilitate effective collective bargaining." *Procter & Gamble Co. v. NLRB*, 603 F.2d 1310, 1015 (8th Cir. 1979).

The duty to furnish information turns on "the circumstances of the particular case." *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 153 (1956). The key question in determining whether information must be produced is "one of relevance." *Emeryville Research Center v. NLRB*, 441 F.2d 880, 883 (9th Cir. 1971). Information is relevant if it is germane and "has any bearing on the subject matter of the case." *Detroit Newspaper Printing & Graphic Communications Union v. NLRB*, 598 F.2d 267, 271 (D.C. Cir. 1979). In determining if the requested information is relevant, the Board need only find a "probability that the desired information [is] relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities." *NLRB v. Acme Industrial Co.*, supra at 437. Accord: *Oil Workers Local 6-418 v. NLRB*, 711 F.2d 348, 359 (D.C. Cir. 1983).

The standard for determining whether particular information is relevant to the Union's bargaining responsibilities is a liberal "discovery-type standard" of relevance. *NLRB v. Acme Industrial Co.*, supra, 385 U.S. at 437 (citing 4 Moore, *Federal Practice*, Section 26.16(1), 1175–1176, 1181 (2d ed.) ("the standard for determining relevancy at a discovery examination is not as well defined as at the trial . . . . [C]ourts of necessity must follow a more liberal standard"). "A broad disclosure rule is crucial to full development of the role of collective bargaining under the Act" because, "[u]nless each side has access to information enabling it to discuss intelligently and deal meaningfully with bargainable issues, effective negotiation cannot occur." *Detroit Newspaper Printing & Graphic Communications Union*, supra at 271. See also *General Electric Co. v. NLRB*, 466 F.2d 1177, 1183 (6th Cir. 1972).

Certain information is considered "so intrinsic to the core of the employer-employee relationship as to be presumptively relevant." *Electrical Workers v. NLRB*, 648 F.2d 18, 24 (D.C. Cir. 1980). See also *Equitable Gas Co. v. NLRB*, 637 F.2d 980, 993 (3d Cir. 1981) ("information directly relevant to mandatory subjects of bargaining is 'presumptively relevant,' and must therefore be disclosed unless it is plainly irrelevant").

When the requested information concerns persons not represented by the union, however, there is no such presumption and the union has the burden of establishing that the information is necessary to the performance of its representational responsibilities." *NLRB v. Postal Service,* 18 F.3d 1089, 1101 (3d Cir. 1994) (citing *Ohio Power Co.*, 216 NLRB 987, 991 (1975), enfd. 531 F.2d 1381 (6th Cir 1978)). This burden is not a heavy one. It requires only that a union show a "probability that the desired information is relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities." *NLRB v. Acme Industries Co.*, supra at 437. See also *New Jersey Bell Telephone Co.*, 936 F.2d at 150 (citing *Transport of New Jersey*, 233 NLRB 694 (1977) "it is sufficient that the union's request for information be supported by a showing of 'probable' or 'potential' relevance")).

In making this showing, a union is not required to demonstrate the facts it relied on to support its information request are accurate or reliable but only that it had a reasonable basis to suspect that the employer was in breach of the collective-bargaining agreement and, therefore it requested information to confirm its suspicions and make an informed choice about performing representational duties. *NLRB v. George Koch Sons*, 950 F.2d 1324, 1332, 1334 (7th Cir. 1991); and *Washington Materials Inc. v. NLRB*, 803 F.2d 1333, 1339 (4th Cir. 1986). The Union may reasonably rely on the observations of union officials or reports from employees. *NLRB v. Associated General Contractors*, 633 F.2d 766, 771–772 (9th Cir. 1980); *Walter N. Yoder & Sons, Inc. v. NLRB*, 754 F.2d 531, 534 (4th Cir. 1985) (reports by union members that employer was interchanging employees and work with a nonunion business is sufficient to require disclosure). *NLRB v. Leonard B. Herbert Jr. & Co.*, 696 F.2d 1120, 1123–1126 (5th Cir. 1982), cert. denied 464 U.S. 817 (1983).

Here the information sought is not presumptively relevant because it does not relate directly to the terms and conditions of employment of the employees represented by the Union. I find, in this case, the Union has met its burden of establishing the potential relevance of the requested information under the liberal discovery standard applied in these cases. Respondent's own comments led the Union to reasonably believe the SIU arbitration award contained information that would indicate if it should pursue its belief that articles 1, 2, and 38 of the collective-bargaining agreement had been violated by Respondent when it terminated the barge operation and handled the business with the tanker staffed by SIU members. Prior to Respondent's acquisition of the *Coast Range*, the unlicensed deck crew was represented by the Sailors Union of the Pacific. One of Respondent's representatives informed the Union's national president the award to the SIU was pursuant to an arbitration. Also there is a question of whether Respondent violated any duty to engage in effects bargaining.

The Respondent did not inform the Union of the pending change in operation, rather, the Union learned of the termination of the operation of the *450-6* barge from the Tracy grievance, dated July 15, more than 2 weeks after the commencement of operations of the *Coast Range* in lieu of the *450-6* barge. Respondent admits CPTI is an affiliate of one of its affiliates, Crowley Towing and Transportation. Respondent's declaration, by Baldwin, that an affiliate with towing in its company name had an affiliate that purchased tankers which were performing the transportation of the products previously transported by the *450-6* barge, could reasonably raise the ques-

[10] See *Metropolitan Edison Co. v. NLRB,* 460 U.S. 693 (1983).

tion the SIU arbitration award contained information relevant to contract enforcement. Moreover, the parties were negotiating a new agreement, and the manner in which the SIU was awarded the work in the arbitration may have relevance to the Union's wanting to retain or modifying paragraphs 1, 2, and 38 in the new agreement.

Baldwin claimed "CPTI is a separate company and in a substantially different type of business than the barge transportation engaged by CMS." Baldwin also asserted in a letter to the Union: "CMS did not shift the work that was formerly performed by Barge 450-6 to one of the new oil tankers that a separate company . . . (CPTI) purchased from TOSCO." The Union explained to Respondent, in pursuit of information to determine if the collective-bargaining agreement had been violated, it had "tried to get more information from you [Baldwin] on occasion and you have indicated 'you do not know'. How can the Union be expected 'to know' information regarding the purchase of the tankers and what the Company intended to do with the tankers when you, Manager of Labor Relation, don't even know." It was in this missive the Union asked Respondent to provide a copy of the SIU arbitration award "that deals with the crewing of these ships at your earliest convenience." Respondent does not deny the Unions understanding the SIU arbitration award deals with the crewing of the *Coast Range*. Respondent argues the crewing of its other ship, which may also be included in the SIU arbitration award, is not relevant to the Union. Respondent did not offer the SIU arbitration award with materials relating to the operation of the second tanker expunged.

The Union's request was based on more than naked suspicion, a representative of Respondent informed the Union's national president of the SIU arbitration award which led to the replacement of the existing unlicensed crews representative. The Union knew Respondent had an affiliate that owned and operated the tanker that replaced the barge and was claiming it was not a replacement because it was not a barge. The Union knew Respondent did not inform it of the change in operations and the details of the purchase. The Union also knew its members were no longer loading barges at Tosco's Avon facility and one or more had been laid off by Respondent. These factors form an objective factual basis justifying a reasonable suspicion the SIU arbitration award was relevant to its representational obligations including determination of whether to seek contract enforcement through grievances or other means. Respondent also knew the Union was claiming, by the grievances, that several articles of the collective-bargaining agreement had been breached and had requested arbitration of the matter. While Respondent asserts the grievances were untimely, the question may be considered by the arbitrator. Thus, I find the Union's request was made in good faith and in furtherance of its representational responsibilities and duties.

Even if it is determined the grievances were not timely and there were no justifiable grievances, the Union is not required, "in order to establish entitlement to see the disputed document, to have actually filed a contractual grievance or lawsuit." It is to enable the Union to make an informed judgement about pursuing such remedies that it seeks and needs to see the requested information. *Uniontown County Market*, supra, 326 NLRB 1069. Respondent's claim the Union has ulterior motivations for requiring the SIU arbitration award is entirely speculative and not supported by any probative evidence. The information sought has the requisite probability of relevance in assisting the Union in fulfilling its statutory duties and responsibilities as the employees' exclusive collective-bargaining representative under a present collective-bargaining agreement which is currently being renegotiated. The information sought has the potential of being relevant to the Union's performance of its duties to administer and police the collective-bargaining agreement and/or negotiate a new collective-bargaining agreement.

Respondent clearly knew the Union's members were no longer working at Tosco, that it moved the *450-6* barge to Alaska, which is not within the Union's geographical jurisdiction, and the barge it moved to the West Coast was not operating in the San Francisco Bay area. Respondent also knew the new tanker company was an affiliate of an affiliate. Respondent also knew the Union was seeking a copy of the SIU arbitration award to access the change of operation intelligently to assist in the effective determination of whether and how to proceed in contract administration and contract negotiations. The Union is entitled to equal access to the information Respondent claims refutes its claim there may have been a contract violation. Respondent knew the potential of the work preservation provisions of the collective-bargaining agreement.

That Respondent may interpret these provisions differently than the Union, does not relieve it of the responsibility to provide the requested arbitration award, which one of its own representatives, the Union understood, without refutation, related was the basis for the award of the work to the SIU. Respondent made no claim the SIU arbitration award would not be of assistance. Respondent's witnesses testified they did not know what the SIU arbitration award contained, therefore, there was no predicate for Respondent's representatives to determine the representations by another of its agents to the Union's national president were incorrect or that the reasons advanced by the Union were insufficient to establish relevance. The Union is not required to show the information triggering its request was accurate or ultimately reliable; a union's request for information may be based on heresay. *Magnet Coal,* 307 NLRB 444 fn. 3 (1992). The Union is not required to accept Baldwin's representation that the new company was a totally separate operation and not an affiliate or towing company within the meaning of the contract. *Shoppers Food Warehouse Corp.*, supra, 315 NLRB 258.

Baldwin admitted he would have supplied the Union with some of the information it believed was contained in the SIU arbitration award, including the name of the affiliate operating the *Coast Range*. Respondent confirmed an affiliate was in fact operating at Tosco's Avon facility in lieu of the *450-6* barge. The Union believed such an operation may be in violation of articles 1, 2, and 38 of the collective-bargaining agreement. The Union also hoped to determine if the collective-bargaining agreement the SIU was claiming the work under included tug and barge operations, which could arguably be encompassed within its contractual jurisdictional limits. The duty to provide information includes information relevant to contract administration and negotiations. *Barnard Engineering Co.*, 282 NLRB 617, 619 (1987); *Leland Stanford Junior University*, 262 NLRB 136, 139 (1982), enfd. 715 F.2d 473 (9th Cir. 1983). The Union's initial information request and subsequent letter explained these predicates to Respondent.

As revealed at the hearing, the Union also was considering whether to make a claim for the work. The Union's November 21 letter indicates it tried to get the information from Respondent on previous occasions without success. That the informa-

tion may be later used for subsequent work demands does not make it irrelevant to the union's contract administration duties. *NLRB v. Associated Contractors of California,* supra, 242 NLRB 891, 893, enfd. 633 F.2d 766 (9th Cir. 1980). Regardless of the eventual merits of the Union's claim of contract violation with the result its bargaining unit was unlawfully reduced, the Union is entitled to the requested information under the "discovery-type" standard established in *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437 (1967). Potential or probable relevance in sufficient to meet this standard. *Children's Hospital of San Francisco*, 312 NLRB 622, 625 (1993); and *Pfizer, Inc.*, 268 NLRB 916, 918 (1984), enfd. 763 F.2d 887 (7th Cir. 1985).

The Union, in its initial contacts with Respondent concerning the operation of the *Coast Range*, consistently claimed contract enforcement as the nexus for its actions, including the information request. At the time it made the request for the SIU arbitration award, the Union made clear this action was a continuance of its claim there may be a violation of the collective-bargaining agreement, which could require arbitration or other enforcement action. Respondent continually failed to provide the sought information, as indicated in the Union's November 21 letter.

The Union is entitled to judge for itself, based on the reasons for awarding the work to the SIU, whether to press its claim in grievance procedure, through the Board, or in the courts. Discoverable information need only appear "reasonably calculated to lead to the discovery of admissible evidence." Fed.R.Civ.P. 26(b)(1). The Board does not evaluate the merits of the Union's claim of contract breach in deciding whether the requested information is relevant. *Island Creek Coal Co.*, 292 NLRB 480, 487 (1989), enfd. mem. 899 F.2d 1222 (6th Cir. 1990). For the previously stated reasons, the Union has shown an objective basis for its suspicions. *Knappron Maritime Corp.*, 292 NLRB 236, 238–239 (1988). See also *Postal Service*, 310 NLRB 391 (1993).

In sum, I find the Union communicated to Respondent the information was reasonably relevant to policing a current collective-bargaining agreement and may have relevance to the negotiations of a new agreement, under the liberal discovery-type standard applicable in these cases, based on objective factors, including statements of Respondent's own personnel, the cessation of operations of the *450-6* barge, the layoff or its members; and Respondent's admission of affiliation with the owner of the *Coast Range*. The Union demonstrated it had a reasonable basis to suspect Respondent was diverting bargaining unit work to an affiliate and the details of such diversion, which Baldwin told the Union he did not know, were contained in the SIU arbitration award.

Another factor raising concern of violation of the collective-bargaining agreement was the failure of Respondent to notify the Union prior to the termination of operation at Tosco's Avon facility of the *450-6* barge and the use, in lieu thereof, of an affiliate's tanker. This lack of timely notice may be construed by an arbitrator as relieving the Union from the 20-day filing of grievances requirement of the collective-bargaining agreement. See, generally, *Kansas Education Assn.*, 275 NLRB 638, 639 (1985); *American Distributing Co. v. NLRB*, 715 F.2d 446 (9th Cir. 1983), cert. denied 466 U.S. 958 (1958), enfg. 264 NLRB 1413 (1982). The failure to provide advance notice is another objective fact that could have raised suspicion the contact was being subverted. The Respondent knew from the grievances filed as well as the Union's communications that the Union suspected the diversion of unit work was a violation of articles 1, 2, and 38 of the collective-bargaining agreement. *NLRB v. George Koch & Sons*, supra, 950 F.2d 1324 (7th Cir. 1991). If Respondent did not possess a copy of the SIU arbitration award, it could make reasonable efforts to obtain the information from an affiliate in order to satisfy its bargaining obligation. *Arch of West Virginia*, 304 NLRB 1089 (1991). Assuming arguendo, the grievances were not timely, Respondent overlooks its own admission that the Union has other mechanisms of policing the contract which are not claimed to be time barred by the collective-bargaining agreement. There is no question the charge was filed in this proceeding within the 10(b) period and is timely. Section 10(b) of the Act does not constitute a bar to the unfair labor practice allegation.

Respondent has failed to establish a persuasive reason for its failure to provide the information. Respondent does not claim the SIU arbitration award is confidential or contains trade secrets. There is no claim the Union has ever misused information it received from Respondent. Respondent has not proposed any practicable alternative to disclosure. Accordingly, I conclude, for the above stated reasons, that Respondent failed to meet its bargaining obligations and violated Section 8(a)(5) and (1) of the Act by refusing to furnish the Union with a copy of its affiliates SIU arbitration award.

THE REMEDY

Having found Respondent has engaged in certain unfair labor practice conduct in violation of Section 9(a)(5) and (1) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Charging Party is a labor organization within the meaning of section 2(5) of the Act.

3. The following employees of the Respondent constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees of Respondent engaged in the loading and/or discharging of Harbor Tug and Barge Company barges operating in Northern California, south to and including Morro Bay, north to Coos Bay and split discharges involving Coos Bay Oregon Ports of Call and Columbia River Area; excluding all other employees, guards, and supervisors as defined in the Act.

4. At all times material, the Union has been, and is now, the exclusive collective-bargaining representative of the Respondent's employees in the above unit within the meaning of Section 9(b) of the Act.

5. By refusing to provide a copy of the SIU arbitration award to the Union on and after November 21, 1997, Respondent has engaged in unfair labor practice conduct within the meaning of Section 8(a)(5) and (1) of the Act.

6. The aforesaid unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[11]

ORDER

The Respondent, Crowley Marine Services, Inc., San Francisco Bay area, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with the Union by refusing to furnish the Union with a copy of the SIU arbitration award involving its affiliate Crowley Petroleum Transport, Inc.

(b) In any other like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative actions necessary to effectuate the policies of the Act.

(a) On request, bargain collectively with the Union by furnishing it with a copy of the SIU arbitration award, as sought by the Union on and after November 21, 1997. Pursuant to the Board's decision in *Excel Container*, 325 NLRB 17 (1997), and to require Respondent to provide the Union without any additional requests by the Union, all information requested by the Union on and after November 21, 1997, concerning the SIU arbitration award. *People Care, Inc.*, 327 NLRB No. 144 (1999).

(b) Within 14 days after service by the Regional Director, post at its San Francisco Bay area facilities, copies of the attached notice marked "Appendix."[12] Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained by it for 60 consecutive days thereafter in conspicuous places, including all places were notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by other material. In the event that during the pendancy of these proceedings Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current and former employees employed by the Respondent at any time since December 10, 1997.

(c) Within 21 days after service by the Regional Director, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

[11] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.408 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[12] If this Order is enforced by a Judgement of the United States court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgement of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid or protection
> To choose not to engage in any of these protected concerted activities.

Accordingly, we give you these assurances:

WE WILL NOT refuse to bargain collectively with Inlandboatmen's Union of the Pacific, International Longshore & Warehouse Union, AFL–CIO, in an appropriate bargaining unit, by refusing to furnish the Union with a copy of the SIU arbitration award involving our affiliate Crowley Petroleum Transport, Inc., as requested by the Union, on and after November 21, 1997.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, furnish the Union with the above-referenced information, as sought by it on and after November 21, 1997. Pursuant to the Board's decision in *Excel Container*, 325 NLRB 17 (1997), and to require Respondent to provide the Union without any additional requests by the Union, all information requested by the Union on and after November 21, 1997, concerning the SIU arbitration award. *People Care, Inc.*, 327 NLRB 814 (1999).

CROWLEY MARINE SERVICES, INC.